

ISSUE BRIEF—AUTHORIZERS

Role of Charter School Authorizers: What responsibilities do charter authorizers have to ensure that schools under their purview are meeting their legal obligations and providing excellent services to students with disabilities?

I. Introduction

Charter school authorizers are the entities granted power in state charter statutes to create charter schools. Depending on the respective state statute, authorizers may be state education agencies, local education agencies, specially appointed charter boards, institutions of higher education or independent non-profit boards. Charter authorizers are responsible for establishing and guiding the operation of charter schools through responsible oversight and therefore play a critical role in ensuring that charter schools are fulfilling their responsibility to serve all students, including those with disabilities. Charter authorizers take many forms and can be school districts, state education agencies, independent boards, universities, or nonprofits, depending on the state in which they operate.

As the entity that initially approves a charter application, oversees delivery of services, and renews or revokes schools' ability to operate, charter authorizers must take seriously their role and be informed regarding their responsibilities regarding special education in order to best serve students and comply with applicable laws. The authorizer has a powerful role to play in approving excellent schools and holding them to high standards that allow for improved options for all students; however, this important work requires skill and commitment along with full understanding of what it entails. This document offers a general overview of the role of the authorizer in ensuring that high quality special education programs are a part of a school's successful model. The resources listed at the end of this document offer additional insight and resources for further information.

II. Legal Obligations

A. LEA Status

The legal status of a charter school has significant impact on how they function and to what extent their responsibilities and obligations are shared with the larger district within which they reside, particularly as it relates to special education. The public education system consists of state education agencies (SEAs), school districts or other local education agencies (LEAs), and schools that are part of an LEA. Where a charter school fits into this structure is largely determined by its legal identity or "LEA status," i.e., whether it is its own separate LEA or a part of a larger LEA made up several schools, including the local traditional public schools. State charter law typically designates the legal identity of charter schools, although some states have more complicated structures that allow for a hybrid identity where the school is part of an LEA for some purposes, but an independent LEA for others, namely special education.

States that give charter schools legal autonomy by giving them status as independent LEAs treat such schools like their own district and give them both the independence and the obligations, including significant programmatic and financial responsibilities, that go with that status. Public charter schools acting as an independent LEA enjoy more freedom in areas such as curriculum design, hiring decisions, and program implementation, but are responsible for the full continuum of services for students with disabilities analogous to a multi-school district.

In the alternative arrangement where a district serves as the LEA and the charter school functions as one of the group of schools under that district's purview, the district retains primary responsibility for special education, which limits the obligations of the charter school and allows access to economies of scale for services such as human resources, transportation, and legal counsel through the district. This arrangement limits the charter school's autonomy by making the school adopt the district's approach to educating students with disabilities including relying on the district for evaluations, service delivery and other measures.

B. Applicable Laws

Four federal laws primarily influence how special education is provided in all public schools, both charter and non-charter: the Individuals with Disabilities Education Act (IDEA), the Elementary and Secondary Education Act recently reauthorized as the Every Student Succeeds Act (ESSA), Section 504 of the Rehabilitation Act of 1973 (Section 504), and the Americans With Disabilities Act (ADA).

1. Individuals With Disabilities Education Act

IDEA is the primary federal law impacting special education in public schools and supports rights outlined in civil rights statutes such as Section 504 and ADA by providing students with a wide range of disabilities access to a public education in line with that of their non-disabled peers. IDEA provides financial assistance to states in order to guarantee special education and related services to students with disabilities; any state receiving funds under IDEA must follow the requirements established by the law. The 1997 amendments to IDEA made it clear that charter schools are covered under the law and made specific reference to a charter school's legal status as an LEA or part of an LEA, discussed in the section above.

Under IDEA, school districts serve as the primary vehicle for students with disabilities, ages three to 21, to access essential supports and interventions. Services typically referred to as "special education and related services," are provided to enable children with certain categories of disabilities to access public education to the same extent as their peers without disabilities. IDEA also provides due process protections for the identification, evaluation and placement of students with disabilities by requiring written notice of these rights and creating procedural requirements for resolution of conflicts.

The basic requirements of IDEA include:

- **Child Find** – Identifying children ages birth to 21 who are eligible to receive special education supports and services. After a child has been identified as eligible for services under IDEA, the school must provide the full range of support required.
- **Individualized Education Program (IEP)** – All students receiving special education services must be given an IEP that spells out the student's learning needs, services that will be provided, and how progress will be measured.
- **Free Appropriate Public Education (FAPE)** – Public schools are responsible for providing students with disabilities a free and appropriate education, which includes all of the services and programs identified by the IEP team as necessary to meet the child's needs at no cost to the student's family.
- **Least Restrictive Environment (LRE)** – Students with disabilities must be educated along with non-disabled peers to the maximum extent appropriate for each child's needs, drawing on accommodations, modifications and supports as needed.

2. Section 504 & the Americans with Disabilities Act

Section 504 and the ADA are federal civil rights statutes that provide protection against discrimination for individuals with disabilities and disabling conditions. Section 504 and the ADA function more broadly than IDEA to include any individual who has a physical or mental impairment that substantially limits one or more life activities, including learning. This language can cover disabilities that do not fall under one of the 13 specific categories listed in IDEA, such as a child suffering from a chronic illness or physical impairment resulting from cerebral palsy. These civil rights laws cover children who attend charter schools to the same extent as children in any other public school.

Section 504 and the ADA are applied almost identically in a public school context – ensuring that no otherwise qualified individual with a disability shall, solely by reason of her or his disability, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving federal financial assistance. These statutes provide for reasonable accommodations to provide physical access to facilities, but stop short of requiring accommodations that would “fundamentally alter” a particular program. Section 504 has requirements for child find, evaluation, FAPE and LRE similar to those found under IDEA, although Section 504 does not provide funding and no IDEA funds can be used for students eligible only under 504.

3. Every Student Succeeds Act

The Elementary and Secondary Education Act of 1965 (ESEA), reauthorized as the Every Student Succeeds Act (ESSA) in 2015, is a federal statute designed to provide states, districts, and schools with additional funding to benefit children living below or just above the federal poverty level. Over the last five decades, ESEA has evolved to contain multiple “titles” (i.e., specific funding streams) developed to help at-risk students, such as students at risk due to poverty, migrant children, English learners, and neglected children. The statute prioritizes accountability for results, expanded choice for parents, greater local control and flexibility, and implementation of effective practices based on scientific research. ESEA largely defers to IDEA and the other statutes outlined above with regard to educating students with disabilities. The law does, however, provide a special education category for accountability purposes, which specifically requires demonstration of academic progress for students with disabilities.

III. Role of Authorizers

Charter authorizers, working within the confines of applicable state law and in conjunction with their state education agencies, establish the procedure through which new schools seeking a charter must apply for and be granted a charter to operate, evaluate and oversee school performance, and ultimately decide whether to renew or revoke a school’s charter. While the specifics of how an authorizer functions and performs these responsibilities differ significantly based on state laws and the legal identity of the school, the following basic guidelines apply.

A. Pre-Authorization

During the pre-authorization phase, the authorizer sets the expectations for what schools applying for a charter should do in order to successfully complete the authorization process. It is critical that authorizers emphasize at this early stage the importance of incorporating special education into overall planning from the beginning. Applicants may not be aware of their responsibilities to students with disabilities, and the authorizer should assist them with becoming informed regarding federal and state laws guiding their role in special education. It is also critical that authorizers make it clear at this early stage that special education is included in the considerations of whether a school will be granted a charter and that applicants will be required to demonstrate that they have considered and planned for the inclusion of all students, including those with disabilities.

Specifically, charter applications should require demonstration that special education has been considered and planned for in the areas of human resources, curriculum and assessment, professional development, administration, special education funding, facilities and transportation.

B. Authorization

During the authorization phase, the applicant completes the formal application and seeks a charter, which is the formal contract under which the school will operate. The authorizer should ensure that, in accordance with the appropriate level of responsibility the school will have given their LEA status, the applicant has plans for addressing the categories of responsibility listed above.

Charter applicants at this stage generally articulate the school's mission, structure, educational model, budgets and assessment and accountability plan and as they do so, they should also be required to explain their plan regarding governance, service delivery, and financing of special education. It is the authorizer's responsibility to ensure that the applicant has a feasible plan to meet their legal responsibilities and, more generally, to provide a quality education to all students. While the exact extent to which a charter authorizer is responsible for any shortcomings on the part of a school has not been determined under federal law, authorizers should take this role seriously on both legal and moral grounds.

Upon approval of the application, the parties will sign a contract outlining all of these considerations. Some authorizers have boilerplate language for the contract, but the parties can also engage in negotiations that provide greater detail regarding the distribution of responsibilities. The contract should articulate who is responsible for executing IDEA provisions and how special education funds will be allocated.

C. Oversight

Once a charter is granted and the school begins operation, the authorizer becomes responsible for overseeing the school and holding them accountable for the goals and objectives detailed in the application and charter contract. The specifics of the authorizer's role will depend greatly on who the authorizer is (LEA, SEA, appointed board, or other entity) and varies by state and legal identity of the charter. If the authorizer is the district LEA within which the charter operates, the responsibility is often shared.

Accountability and reporting are critical aspects of the provision of special education and particularly for compliance with federal laws such as IDEA. The division of responsibility for paperwork and compliance depend upon the individual state and the LEA status of the school, but authorizers should ensure that these considerations are articulated in the charter contract and understood by the school. Gathering and reporting information such as statistical data on students, results of standardized testing, and financial information are critical to the accountability process.

Authorizers should also be aware of the federal and state monitoring processes that apply to them. Each state designs a process for monitoring the compliance of LEAs within the SEA, which often includes site visits by a team and periodic review and documentation of findings. The authorizer should know and make clear to the schools under its purview how the relationship between the two entities will share these responsibilities and ensure that quality procedures and outcomes are established.

D. Renewal/Revocation

Authorizers are ultimately responsible for deciding whether a school's charter should be renewed on a periodic basis. In evaluating the metrics and fulfillment of goals and obligations outlined in the application and charter contract, the authorizer should specifically consider whether the responsibilities for special education have been met. Failure to fulfill such obligations, including review of the progress made by students with disabilities and repeated formal or informal complaints regarding the school's provision of special education, and low enrollment of students with disabilities should be considered when evaluating renewal of the school's charter. Typically, a school will be given an opportunity to remediate and resolve issues.

In circumstances where a school has not met its obligations, the authorizer may consider not renewing the school's charter or putting them on probationary status. In extreme situations, the authorizer may revoke the charter outside of the normal renewal cycle. If a charter school ceases to exist, there are certain considerations specific to special education that must be considered. Procedures for the transfer of student records, distribution of fixed assets, and accounting for special education funds must be in place and are best outlined up front in the charter contract.

IV. Conclusion

Clear communication regarding roles and responsibilities between charter authorizers and the schools they oversee will assist with successful compliance with laws and, most importantly, a successful school with a strong special education program that allows all students to succeed. Authorizers should be informed about the intricacies of the laws and funding streams affecting their individual states and schools in order to provide strong oversight and guidance.

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